

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

10 BARBARA DIANE WARD )  
11 a.k.a. DIANE WARD, ) 2:04-cv-0448-GEB-GGH  
12 Plaintiff, )  
13 v. ) ORDER RE ATTORNEY'S FEES\*  
14 SUTTER UNION HIGH SCHOOL DISTRICT, )  
15 RYAN ROBISON, Individually and in )  
16 His Official Capacity, LORI )  
17 TEXEIRA, Individually and in Her )  
18 Official Capacity; and SUTTER )  
19 COUNTY, DAVID MCFARLAND, )  
20 Individually and in His Official )  
capacity; and JOHN DOE, )  
Individually and in His Official )  
Capacity, )  
Defendants. )  
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Defendants Sutter County and David McFarland (collectively the "Defendants") move for an \$86,589.50 attorney's fees award under 42 U.S.C. § 1988, based on their prevailing-party status, since summary judgment was granted against Plaintiff Barbara Ward ("Ward").

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\* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1 Defendants contend that an award of attorney's fees is proper because  
2 Ward's claim was "groundless from the start" and she "continued to  
3 litigate" even after being informed by Defendants that her claims  
4 lacked "legal and factual bases." (Defs.' Mem. Supp. Mot. 4.) For  
5 the reasons stated below Defendants' motion is denied.

6 BACKGROUND

7 Ward's Second Amended Complaint (the "Complaint") alleged  
8 that Defendants were liable for invasion of privacy, false arrest,  
9 false imprisonment, and malicious prosecution under 42 U.S.C. § 1983.  
10 State claims for defamation, intentional infliction of emotional  
11 distress, and negligence were also included in the Complaint. The  
12 claims all stemmed from Ward's assertion that Defendant David  
13 McFarland arrested her without probable cause. Defendants' summary  
14 judgment motion was granted on Ward's federal claims and her state law  
15 claims were dismissed under 28 U.S.C. § 1367(c).

16 DISCUSSION

17 A defendant may recover attorney's fees under 42 U.S.C.  
18 § 1988 if "'the plaintiff's action was frivolous, unreasonable, or  
19 without foundation, even though not brought in subjective bad faith.'" Hughes v. Rowe, 449 U.S. 5, 14 (1980) (quoting Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421 (1978)). This is intended to be a  
20 "stringent standard." Id. Therefore, the Ninth Circuit repeatedly  
21 "has recognized [that] '[attorney's] fees in civil rights cases should  
22 only be awarded to a defendant in exceptional circumstances.'" Saman v. Robbins, 173 F.3d 1150, 1157 (9th Cir. 1999) (quoting Barry v. Fowler, 902 F.2d 770, 773 (9th Cir. 1990)). And the Supreme Court has  
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1 cautioned that in determining whether a plaintiff's case was frivolous  
2 or unreasonable, district courts must "resist the understandable  
3 temptation to engage in post hoc reasoning by concluding that, because  
4 plaintiff did not ultimately prevail, his action must have been  
5 unreasonable or without foundation." Christiansburg, 434 U.S. at 421;  
6 see also Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th  
7 Cir. 1990) (en banc).

8 Defendants contend that attorneys fees should be awarded  
9 because Ward's claims were "unreasonable and groundless from the  
10 start." (Defs.' Mem. Supp. Mot. at 4.) In support of this claim,  
11 Defendants argue that "[t]he order on defendants' motion for summary  
12 judgment confirms the lack of merit and the settled state of law, as  
13 applied to the facts, on all the section 1983 issues." (Id.) But the  
14 issue is whether Ward's claims were "groundless at the outset," not  
15 whether Defendants prevailed on summary judgment. Karam v. City of  
16 Burbank, 352 F.3d 1188, 1196 (9th Cir. 2003) (holding that  
17 Plaintiff's "inability to present evidence to defeat summary judgment  
18 does not mean that her claims were groundless at the outset"); and see  
19 Hughes v. Rowe, 449 U.S. 5, 14 (1980) ("The fact that the plaintiff  
20 may ultimately lose his case is not in itself a sufficient  
21 justification for the assessment of [attorney's] fees.")

22 Ward's lawsuit was not so factually or legally groundless  
23 from the outset to constitute a frivolous lawsuit. When Ward filed  
24 suit, she had been arrested by Defendant McFarland for multiple theft  
25 felonies. Ward alleged that the only piece of evidence Defendant  
26 McFarland reviewed prior to arresting her, was a video surveillance  
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1 tape from which "even Sheriff Denney . . . could not form an opinion  
2 as to whether or not a theft [] had occurred . . . ." (Pl.'s Mem.  
3 Opp'n Mot. at 4.) "These circumstances furnish some basis, albeit  
4 somewhat tenuous, for [Ward] to theorize" that Defendant David  
5 McFarland willfully deprived her of her Fourth Amendment rights by  
6 arresting her without probable cause.

7 Defendants also argue that because "the lack of merit of the  
8 claims was clearly pointed out to the plaintiff on May 17, 2004, and  
9 again on June 21, 2004 . . . but [plaintiff] continued to litigate,"  
10 an award of attorney's fees is proper. (Defs.' Mem. Supp. Mot. at 4.)  
11 Attorney's fees may be proper where a plaintiff continues to litigate  
12 after it becomes clear the action lacks foundation. Herb Hallman  
13 Chevrolet, Inc. v. Nash-Holmes, 169 F.3d. 636, 645 (9th Cir. 1999).  
14 However, awarding a defendant attorney's fees simply because a § 1983  
15 plaintiff was apprised by her adversary in a letter that her claims  
16 lacked merit would have a "chilling effect upon civil rights  
17 plaintiffs [and be] disproportionate to any protection defendants  
18 might receive against the prosecution of meritless claims." Mitchell  
19 v. Office of the Los Angeles Superintendent of Sch., 805 F.2d 844, 848  
20 (9th Cir. 1986); and see EEOC v. Bruno's Rest., 13 F.3d 285, 287 (9th  
21 Cir. 1993) (noting that a district court must exercise caution in  
22 awarding fees to a prevailing defendant in order to avoid discouraging  
23 legitimate suits that may not be "airtight").

24 For the stated reasons, Ward's § 1983 claim for false arrest  
25 was not "groundless, without foundation, frivolous, or unreasonable."  
26 Karam, 352 F.3d at 1195 (internal quotation marks omitted). Further,  
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1 since Defendants "made no effort to allocate the hours claimed between  
2 [false arrest and Ward's various other] claims," the merits of the  
3 remainder of Ward's claims need not be reached. Pontarelli v. Stone,  
4 781 F.Supp. 114, 127 (D. R.I. 1992). Therefore, the motion for  
5 attorney's fees is denied.

6 IT IS SO ORDERED.

7 Dated: September 23, 2005

8 /s/ Garland E. Burrell, Jr.  
9 GARLAND E. BURRELL, JR.  
10 United States District Judge

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